

REMARKS

Claims 1-3, 5-16, and 18-22 are pending in the present application. To clarify a typographical error in Applicant's previous response and in the present Office Action, claims 4 and 17 were cancelled and claims 21-22 were added in the previous response. In addition, Applicant has variously amended the claims for clarification purposes. Applicant hereby requests entry of this Amendment and further consideration of the present application in view of the following remarks.

Summary of Telephonic Interview of September 22, 2009

Applicant thanks the Patent Office for the telephonic interview held between Examiner Mark Fadok and Applicant's representative Lance Reich on 9/22/2009. During the interview, Applicant's representative discussed the outstanding rejections and the distinctions between the cited references and the amended claims. While no agreement was reached, the Examiner appreciated the distinctions and agreed that the outstanding rejections would be reconsidered in light of the amended claims and below remarks.

Rejections under 35 USC §112, ¶4

Claims 6 and 19 stand rejected under 35 U.S.C. §112, ¶4, as the Office Action contends that claims 6 and 19 do not limit the independent claim upon which they depend. Insofar as this ground of rejection pertains to the claims as amended, Applicant traverses this rejection and requests reconsideration thereof.

Applicant has amended independent claim 1 to clarify that the broadcast radio receivers are configured to determine information relating to goods and services. As described in paragraph 0025 of the specification, the broadcast media does not have to explicitly include information about the purchase of the goods and services, which is the subject matter of dependent claim 6. With the amendment to claim 1, dependent claim 6 properly limits independent claim 1. Similar changes have been made to independent claim 12 and dependent claim 19. Applicant requests withdrawal of the 35 U.S.C. §112, ¶4 rejection.

Rejections under 35 U.S.C. §102(e)

Claims 1, 2, 5-10, 12-13, 16, and 18-22 stand rejected under 35 U.S.C. §102(e) as being anticipated by Christensen (U.S. 6,957,041). Insofar as this ground of rejection pertains to the claims as amended, Applicant traverses this rejection and requests reconsideration thereof.

The standard under Section 102 is one of strict identity. “Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim” (*Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997)). In addition, “[e]very element of the claimed invention must be literally present, arranged as in the claim” (*Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989)). Further, implicit in a review of an examiner’s anticipation analysis is that the claim must first have been correctly construed to define the scope and meaning of each contested limitation (*Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997); *In re Paulsen*, 30 F.3d 1475, (Fed. Cir. 1994), stating for example, “to properly compare [an allegedly anticipatory prior art reference] with the claims at issue, we must construe the term 'computer' to ascertain its scope and meaning.”).

Applicant firstly traverses the rejection because the Examiner has not established a prima facie case of anticipation. As outlined above, every element of the claimed invention must be literally present and arranged as in the claim. In the Office Action page 3, the Examiner states that “Christensen teaches all the features of the instant invention” but does not show how the reference discloses each element of the claim.

Turning to the elements that the Examiner does address, the Examiner contends that Christensen column 6 lines 64-67 discloses broadcasting information that a party records. First, Applicants point out that “broadcasting information that a party records” is not a fair representation of the independent claims. Claim 12 previously recited, for example:

receiving at a broadcast radio receiver a broadcast media including information relating to goods and services that can be purchased by persons receiving the media;
receiving at the broadcast radio receiver a purchase request;
selectively recording purchase data at the broadcast radio receiver for a good and service that a person purchases relating to the broadcast media

which is in no way equivalent to “broadcasting information that a party records.”

Turning to the cited reference, Christensen is generally directed to a system that provides a radio broadcast listener with the ability to purchase media content such as music or speech while listening to the radio. Data such as song title and artist, author or publisher and the IP address for the location where the digital version of the content is stored can be transmitted using the RBDS/RDS data stream. Christensen column 6 lines 64-67, cited by the Examiner, discloses that audio content can be “tagged” for delayed purchase at a later time by scrolling through a playlist stored in the APS module on the radio and presented on the external display of the radio. As disclosed in the preceding paragraph lines 52 through 62, the radio of Christensen contains an APS module configured to store identifier data. Such data is received over a broadcast using RDS or similar technology (see column 6 lines 5-7). Furthermore, Christensen is limited to the purchase of media content such as music or speech (see Christensen, Abstract). In contrast, claim 12 previously recited “selectively recording purchase data at the broadcast receiver for a good and service” and is thus not limited to the purchase of media content. Additionally, claim 12 does not require a separate broadcast stream using RDS or similar technology. As disclosed in paragraph 0022 of the specification, identification data may be broadcast in-band within the broadcast media stream so that a separate communication channel is unnecessary. Claim 12 has been amended to clarify this distinction. Support for the amendment may be found at least in paragraph 0022 of the specification. Similar amendments have been made to independent claims 9 and 12.

For at least the above reasons, Applicants submit that the citations from Christensen do not disclose claim 1 and is allowable. The Examiner has rejected independent claims 9 and 12 for similar reasons and Applicants submit that claims 9 and 12 are allowable for similar reasons. Applicants submit that dependent claims 2, 5-8, 10, 13, 16, and 18-22 are allowable at least by virtue of their dependency on an allowable base claim.

Claim Rejections - 35 USC § 103

Claims 3, 11 and 15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen in view of Moskowitz et al. (U.S. Pub. No. 20020116261). Applicant respectfully traverses the rejection.

For at least the grounds argued earlier with respect to independent claims 1, 9 and 12, from which claims 3, 11 and 15 ultimately depend, claims 3, 11 and 15 are not obvious in view of Moskowitz. For at least the above reasons, Applicants respectfully request withdrawal of the rejection of claims 3, 11 and 15.

Conclusion

In view of the foregoing remarks, Applicant respectfully submits that Claims 1-3, 5-16, and 18-22 are in condition for allowance and entry of the present amendment and notification to that effect is earnestly requested. If necessary, the Examiner is invited to telephone Applicant's attorney (206-332-1380) to facilitate prosecution of this application.

No additional fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees that may be required, including any necessary extensions of time, which are hereby requested to Deposit Account No. 233050.

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